Filed 6/8/15 In re J.C. CA1/4

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re J.C., a Person Coming Under the Juvenile Court Law.	
GEORGIA D. et al., Petitioners, v. THE SUPERIOR COURT OF ALAMEDA COUNTY, Respondent; ALAMEDA COUNTY SOCIAL SERVICES AGENCY, Real Party in Interest.	A144518 (Alameda County Super. Ct. No. OJ13021040)

I.

INTRODUCTION

Six-year-old J.C. has been a juvenile court dependent since August 2013. Initially, the Alameda County Social Services Agency (the Agency) provided family maintenance services to J.C.'s mother, Georgia D. (mother). However, in November 2013, J.C. was removed from her home and placed with a paternal aunt, and mother was afforded reunification services. In February 2015, Joel C. (father) established that he is J.C.'s presumed father. In March 2015, the juvenile court removed J.C. from her relative placement and set a hearing pursuant to Welfare and Institutions Code section 366.26 to

implement a permanent plan for J.C.[1] Both parents seek review by extraordinary writ of the March 2015 order, contending that the juvenile court committed reversible errors by removing J.C. from her relative placement and denying them reasonable reunification services. We reject these contentions and deny both writ petitions on the merits.

II.

PROCEDURAL AND FACTUAL BACKGROUND

A. The Original Dependency Petition

In May 2013, the Agency filed a dependency petition alleging that four-year-old J.C. and her newborn brother, J.D., came within the juvenile court's jurisdiction under section 300, subdivision (b) because of their parents' inability to care for them due to substance abuse. Baby J.D. had been born with a positive toxicology for opiates and experienced withdrawal symptoms requiring hospitalization. Mother admitted taking multiple pain medications for several years and, indeed, J.C. had also tested positive for opiates when she was born. Father also had substance abuse issues requiring further assessment. When he went to the hospital to see his new baby, he smelled of marijuana and he admitted using ecstasy. Furthermore, a week before J.D. was born, father was arrested for driving while intoxicated.

A detention hearing was scheduled for June 3, 2013. The Agency recommended that J.C. remain in mother's care pending further investigation but that J.D. be detained. The social worker reported that when she made an unannounced visit to the home, J.C. appeared to be happy and well cared for by mother. Mother, who lived with extended family, stated that she had only ever taken prescription medication and that she had never been arrested. She had not received prenatal care for J.D. because she did not realize she was pregnant until late in her pregnancy. She then considered an abortion, but was told that she was too far along. Mother expressed remorse about what happened with J.D., and said she wanted to continue to care for J.C. and that father was available to help her.

[1] Statutory references are to the Welfare and Institutions Code unless we state otherwise.

The day after the Agency's home visit, both parents were at the hospital when the social worker served a warrant taking J.D. into temporary custody. Father was very upset, claiming he had no prior knowledge of problems with the baby, or of the Agency's involvement. He was accompanied by a woman he identified as his fiancé, and he told the social worker he had his own place and wanted to keep his son with him. Both mother and father's fiancé were very upset, neither knowing about the other prior to this encounter. The following day, mother and father attended a team decision meeting. When the subject of father's fiancé arose, mother became upset and father was "highly disrespectful" toward her, saying he did not care about mother's feelings because he was not with her. Father became increasingly more agitated and left before the meeting ended.

At the detention hearing, the juvenile court found that the Agency made a prima facie case that J.C. was subject to the court's jurisdiction, but ordered that she remain in mother's home on the condition that mother continue to cooperate with the Agency. The court also ordered that father, who was not present, needed to appear in court for consideration of elevation to presumed father status.

A jurisdiction/disposition hearing was held on June 17, 2013. The Agency recommended that both children be declared dependents, that J.C. remain in mother's home, and that J.D. be placed out of home at an approved relative placement upon his eventual discharge from the hospital. The Agency also recommended that mother receive family maintenance services for J.C. and reunification services for J.D. The Agency did not recommend any services for father—with whom it had not had contact since he walked out of the team decision meeting—because he remained only an alleged father. Mother appeared at the hearing and contested the Agency recommendations. Father did not appear.

A contested jurisdiction/disposition hearing was scheduled for August 8, 2013. By that time the dependency petition had been amended to allege a history of domestic violence by father against mother. The Agency's addendum report reflected that father received personal notice of the pending hearing. The social worker had a chance

encounter with father on July 16, when she went to pick up mother and J.C. Father, who smelled of marijuana, said that he would attend the hearing and request custody of the children.

The addendum report also updated the court about mother's efforts to participate in drug treatment programs. Initially, mother participated in outpatient treatment but her attendance was poor, and she did not follow through with individual therapy, or with a psychiatric referral. Mother blamed her negative home environment and expressed a desire to participate in a residential program. During this period, the Agency made multiple unscheduled home visits which did not raise concern about mother's ability to care for J.C.

On July 16, 2013, mother entered residential treatment, but she left the program on August 5 because of conflicts over her failure to follow rules. During this period, J.C. was living at the program with mother, and J.D., who had been placed with a relative, came for regular visits on Saturday afternoons. However, on one occasion, mother made an unauthorized visit to the relative's home claiming she needed to use the phone to call father. On another occasion, mother told a staff member that her relative was unable to pick up the baby after a visit, which was not true. Mother was granted permission to deliver the baby to the relative caregiver's home, which she eventually did but only after causing significant concern. Furthermore, when mother returned to the program, she tested positive for marijuana and opiates. The program staff also discovered that mother had withdrawn $500 from her welfare debit card, which was supposed to be turned in to the program. When confronted about the debit card, mother elected to leave the program. When staff assured mother she was not being kicked out, she responded that she preferred outpatient treatment.

The day after mother left her program, the Agency made an unannounced home visit. When the social worker arrived, mother and J.C. were just leaving to re-enroll mother in outpatient treatment. Mother denied relapsing and said her dirty drug test must have picked up some prior use. J.C. again looked well and the social worker had no concern about her. The Agency reported that mother was protective of J.C., the child

always seemed safe and well cared for by mother, and the residential program had not reported any incidents concerning the child. Therefore, the Agency continued to recommend a family maintenance program for J.C., but only on the condition that mother enter another residential treatment program and that she consistently participate in outpatient treatment until then.

At the August 2013 jurisdiction/disposition hearing, mother withdrew her contest. The court declared J.C. a court dependent, ordered that she remain in mother's care with family maintenance services, and ordered mother to enter residential treatment as soon as possible and to participate in outpatient treatment until then. The six-month status review hearing was scheduled for January 2014, but the court also set a hearing for the following month for a progress report regarding mother's participation in substance abuse treatment.

At a September 2013 hearing, the Agency reported that mother was on a waiting list for a residential program and was enrolled in outpatient treatment, although her participation was inconsistent due to a recent family tragedy. On August 18, J.D. passed away. He had ongoing health problems and foul play was not suspected. The family was grieving and the Agency offered additional support services. Mother had been scheduled to enter residential treatment on August 28, the same day as her son's funeral, but she was not permitted to enroll because she admitted smoking marijuana a few days earlier. She was referred to a detox program but when she failed to complete it, the program gave her spot to somebody else. The court directed the Agency to continue to assist mother in securing residential treatment.

B. The First Section 387 Petition

In November 2013, the Agency filed a supplemental petition under section 387 seeking a more restrictive placement for J.C. on the ground that mother's ongoing substance abuse problems prevented her from providing appropriate care for her daughter. According to the petition allegations, mother failed to enroll in residential

treatment notwithstanding support services offered to her by the "SEED" program.[2] She tested positive for opiates and THC on several occasions in October and failed to produce prescriptions for the opiates. In addition, her outpatient program reported that she was noncompliant and better suited for residential treatment. Meanwhile, father was still only an alleged father, his interest in J.C. was unknown, and he had an outstanding arrest warrant. The Agency had taken protective custody of J.C. and temporarily placed her with an aunt (aunt).

On November 12, 2013, the court held an uncontested detention hearing on the section 387 petition, removed J.C. from mother's home and continued the matter for jurisdiction and disposition. On December 3, the court held an uncontested jurisdiction/disposition hearing. The Agency recommended that J.C. remain in her placement with aunt, that mother receive reunification services and that father be denied services until he established paternity. The Agency report documented mother's continued noncompliance with services afforded to her. Aunt reported that mother took J.C. from her home without permission for several days, but then returned her later. J.C. appeared to be doing fine in aunt's home. The court found that removal from mother was necessary for the well being of J.C., approved the relative placement with aunt, and ordered the Agency to provide reunification services to mother, but not to father.

On May 20, 2014, the court conducted a six-month review hearing on the supplemental petition. The Agency reported that mother had made minimal progress on her case plan because of her struggles with addiction as well as her depression resulting from the death of her son and the removal of her daughter. Father was incarcerated during most of this reporting period and had not been in contact with the Agency.[3]

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[2] SEED, which stands for Services to Enhance Early Development, is a collaboration between the Agency and the Children's Hospital Oakland/Center of the Vulnerable Child, which "provides comprehensive Child Welfare, Early Childhood Mental Health, and Public Health Nursing services to dependent children ages 0-3.11 years and their caregivers."

[3] On May 8, 2014, the Agency social worker attempted to connect father by sending him a "SASE envelope," and a "Statement of Paternity" form to complete. She

However, he did appear at the review hearing and was appointed counsel. The court ordered that the dependency continue, found that mother made minimal progress on her case plan and deferred the issue of paternity to the next hearing.

In November 2014, the Agency submitted a 12-month review report recommending that the dependency be maintained and mother receive reunification services until the statutory 18-month deadline. Mother had experienced additional setbacks with respect to substance abuse and had also disclosed that she was pregnant, with a due date in March 2015. She was admitted to another residential treatment program in October 2014, but her participation had been inconsistent. She participated in supervised visits with J.C., but there was ongoing tension with aunt. The Agency had been unable to substantiate reports that aunt also suffered from substance abuse problems. Father had been incarcerated since June 2014 and had not been in contact with the Agency.

The 12-month review hearing commenced on November 3, 2014. Neither mother nor father personally appeared but they did appear through counsel. Mother's counsel contested the Agency recommendations and requested that J.C. be returned to mother's care. J.C.'s counsel stated that if mother was not in residential treatment at the time of the contest, she would oppose any request to extend the service period beyond 12 months, expressing serious concerns about mother's history of noncompliance with treatment, lack of consistency with respect to visitation and recent pregnancy. The court directed the Agency to notify the parties if mother left residential treatment and continued the hearing until February 5, 2015, for mother's contest.

C. The Second Section 387 Petition

On December 10, 2014, mother was terminated from her residential treatment program after she was found in possession of opiates and marijuana. Program staff also recovered a cell phone with text messages between mother and aunt conspiring to place

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also advised him to contact the court if he wanted to attend the next hearing, have appointed counsel or request a paternity test.

drugs on J.C. for mother to retrieve during a visit. Thereafter, Oakland police executed a search and seizure warrant and removed J.C. from aunt's home. Mother's doctor at the program notified the Agency that mother admitted that she told aunt to place drugs on J.C. so that she could retrieve them.

In December 2014, the Agency filed a second section 387 supplemental petition seeking a more restrictive placement for J.C. At the December 16 detention hearing, the matter was submitted without objection, the court made findings necessary to remove J.C. from aunt's home, urged mother to reengage with the Agency, and continued the matter for jurisdiction and disposition.

The jurisdiction/disposition hearing on the new section 387 petition began on December 30, 2014. The Agency requested that the court sustain the petition allegations, set aside the prior order placing J.C. with aunt, and deny reunification services to both parents. A transcript of the December 30 hearing is not in the record, but the court's minute order reflects that the Agency reports were admitted into evidence, and the matter was continued to February 5, 2015, the date previously set for mother's contested 12-month review hearing.

D. Combined 12 Month Review and Section 387 Proceeding

In a February 2015 addendum report, the Agency changed its prior recommendations for the 12-month review. It recommended that J.C.'s dependency be maintained with continued supervision by the Agency through its SEED program; that reunification services to mother be terminated; and that the matter be set for a section 366.26 hearing with a recommended plan of adoption.

The Agency reported that mother had been conditionally accepted into another residential treatment program in late December 2014, but she did not provide requested documentation and lost that opportunity. Mother had also been placed on inactive status by the family drug court because of noncompliance. She continued to abuse substances despite her current pregnancy and whether or not she was in treatment. Father was incarcerated from June 18, 2014, until December 16, 2014. In late January 2015, the Agency obtained contact information from father's probation officer and the social

worker made telephone contact. Father reported he would consult his attorney about obtaining custody of J.C.

The contested hearing was held over three court days. On February 5, 2015, both parents appeared with counsel. The court admitted all Agency reports into evidence and heard testimony from mother and father regarding J.C.'s paternity. The court then made a finding that father established presumed father status, but it denied father's request for formal reunification services, stating that it would not further delay securing a permanent situation for J.C. However, the court directed the Agency to conduct an informal evaluation to determine what services father might be eligible to receive, concluding that what he did with those services was "up to him."

After paternity was resolved, the court turned to the mother's contest. Significant confusion developed about what matter was actually before the court, the 12-month review for which the Agency recommended a termination of services to mother, or the section 387 petition for a more restrictive placement with respect to which the Agency was recommending a denial of services to mother. Ultimately the court stated that it would begin with the section 387 petition.

On February 5 and February 26, 2015, the parties elicited testimony from the Agency social worker and from mother. Near the end of the February 26 session, the court revisited father's request for services. Father's counsel insisted he was entitled to reunification services, while the Agency and J.C.'s counsel took the position that, at this late stage in the proceeding, father would have to file a "JV-180" request to change the prior court order and demonstrate a change of circumstance entitling him to formal services. (See § 388.) The court affirmed its prior order that the Agency was not required to provide father formal reunification services. Because father established presumed father status so close to May 11, 2015, the 18-month deadline for J.C.'s case, he had the burden of demonstrating a change of circumstances entitling him to services. The contested hearing was then continued to the following week for argument and findings on the section 387 petition and mother's 12-month review.

On March 3, 2015, father filed a "JV-180 Request to Change Court Order," requesting the court place J.C. with him and/or that he be afforded reunification services. (See § 388.) Allegedly new information supporting this request included that father (1) was incarcerated from June to December 2014; (2) acquired presumed father status at the February 5, 2015 hearing; and (3) was supportive of J.C's prior placements with mother and aunt. Father also stated that he had cared for J.C. during the first two years of her life and he would like the opportunity to have her placed with him or another paternal relative.

The final session of the contested hearing was held on March 19, 2015. The court overruled mother's objection to conducting a combined proceeding to resolve the section 387 petition and the 12-month review, the parties presented arguments, and all pending matters were submitted. The court then made two sets of related and sometimes overlapping rulings. First, the court sustained the section 387 petition, finding, among other things, that J.C. continued to be a court dependent and the previous disposition had been ineffective to protect her. Second, with regard to the 12-month review, the court terminated services to mother and scheduled a section 366.26 hearing to implement a permanent plan for J.C. In reaching these conclusions, the court found that the Agency provided reasonable services and that it was not required to provide additional services to either parent.

With respect to mother, the court found she received family maintenance services from August 8, 2013, to November 6, 2013, and reunification services from November 6, 2013, to December 30, 2014. The Agency was not required to provide additional services because there was not a substantial probability that J.C. would be returned to mother within 18 months of the initial removal. (See § 366.21, subd. (g)(1).) Further, the court also found mother was not entitled to reunification services under section 361.5, subdivision (b)(13) (section 361.5(b)(13)) because of her history of chronic substance abuse and resistance to prior court ordered treatment for three years prior to the filing of the second section 387 petition.

Regarding father, the court denied the JV-180 request for a change order, finding that the most important factor was J.C.'s need for a "stabilized situation." Thus, the court affirmed its prior order that father would continue to receive informal services from the Agency until the expiration of the 18-month period but that he was not entitled to formal reunification services.

Additional findings included that both mother and father had made minimal progress toward alleviating or mitigating the causes necessitating J.C.'s removal, and that J.C. could not be returned home because of a substantial risk of detriment to her safety or well-being. The court ordered supervised visitation for both parents and set the matter for a section 366.26 hearing to select a permanent plan for J.C.

III.

DISCUSSION

A. The Second Section 387 Petition

Mother and father both contend that this court must reverse the order removing J.C. from aunt's home pursuant to the section 387 supplemental petition. "We review a decision to remove a child from a relative caretaker under the substantial evidence test. [Citation.] We review the evidence in the light most favorable to the trial court's determinations, resolve all evidentiary conflicts in favor of the prevailing party, and indulge in all reasonable inferences to uphold the trial court's findings. [Citation.] We do not reweigh the evidence, evaluate the credibility of witnesses, or resolve evidentiary conflicts. [Citation.] The burden is on the party or parties challenging the findings and orders of the trial court to show there is no evidence of a substantial nature to support the finding or order. [Citation.]" (*In re H.G.* (2006) 146 Cal.App.4th 1, 12-13 (*H.G.*).)

"When the Agency seeks to change the placement of a dependent child from relative care to a more restrictive placement, such as foster care, it must file a supplemental petition under section 387." (*H.G.*, *supra*, 146 Cal.App.4th at p. 10.) Section 387, subdivision (b) provides that a supplemental petition "shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the child or, in the

case of a placement with a relative, sufficient to show that the placement is not appropriate in view of the criteria in Section 361.3." "Under section 387, the Agency has the burden to show by a preponderance of the evidence that the factual allegations alleged in the petition are true. If the court finds the factual allegations are true, then the court determines whether the previous disposition is no longer effective in protecting the child or whether placement with the relative is not appropriate in view of the criteria in section 361.3. [Citations.]" (*H.G.*, *supra*, 146 Cal.App.4th at p. 11.) "If the court finds the previous disposition is no longer effective or the placement with the relative is not appropriate, then, in a separate disposition phase, the court must determine whether removal of the child from his or her placement is required. [Citations.]" (*Id*. at p. 12.)

In the present case, mother and father advance identical arguments in their respective petitions. Both parents implicitly concede that substantial evidence supports the factual allegations in the petition that mother and aunt used J.C. as a drug mule. Nevertheless, they maintain the removal order must be reversed because the juvenile court did not expressly consider every factor set forth in section 361.3, subdivision (a).

"Section 361.3, subdivision (a), lists criteria for relative placement to be considered by the social worker and the court, including, but not limited to, the child's best interest [citation]; the wishes of the parent, relative, and child [citation]; the provisions of Division 12, Part 6 of the Family Code (including Fam. Code, § 7950 [preference for placement with relative and prohibited discrimination]) [citation]; placement of siblings in the same home, if in the children's best interests [citation]; '[t]he good moral character of the relative and any other adult living in the home, including whether any individual residing in the home has a prior history of violent criminal acts or has been responsible for acts of child abuse or neglect' [citation]; the nature and duration of the child-relative relationship and the relative's desire to care for the child and provide permanency [citation]; the relative's ability to provide a safe, secure, and stable environment, a home, necessities of life, and legal permanence; exercise proper and effective care and control; protect the child from the parents; facilitate reunification, relative visitation, and implementation of the case plan; and arrange for appropriate and

safe child care [citation]; and the safety of the home [citation]." (*In re Miguel E.* (2004) 120 Cal.App.4th 521, 541.)

Here, parents contend that each statutory factor set forth in section 361, subdivision (a) is important when evaluating the ongoing propriety of a relative placement and that a juvenile court commits reversible error if it fails to expressly address any one of them. (Citing *H.G.*, *supra*, 146 Cal.App.4th at pp. 15-16.) Both parents have forfeited this claim by their respective failure to raise the issue below.

"An appellate court ordinarily will not consider challenges based on procedural defects or erroneous rulings where an objection could have been but was not made in the trial court. [Citations.] . . . The purpose of the forfeiture rule is to encourage parties to bring errors to the attention of the juvenile court so that they may be corrected. [Citation.] Although forfeiture is not automatic, and the appellate court has discretion to excuse a party's failure to properly raise an issue in a timely fashion [citation], in dependency proceedings, where the well-being of the child and stability of placement is of paramount importance, that discretion 'should be exercised rarely and only in cases presenting an important legal issue.' [Citation.]" (*In re Wilford J.* (2005) 131 Cal.App.4th 742, 754 (*Wilford J.*); see also *In re A.O.* (2004) 120 Cal.App.4th 1054, 1061, fn 4; *In re Anthony P.* (1995) 39 Cal.App.4th 635, 640-642.)

The circumstances of this case weigh in favor of applying the waiver rule to parents' claim that the juvenile court erred by failing to adequately consider each criteria set forth in section 361.3, subdivision (a). (*Wilford J.*, *supra*, 131 Cal.App.4th at p. 754.) At the conclusion of the contested hearing, father submitted on the issues of the section 387 petition and mother's contest of the 12-month review, contending only that J.C. should be returned to him, or that he should be afforded services. Furthermore, mother's only objection to the 387 petition was that there was insufficient evidence that the text messages on mother's cell phone were actually between mother and aunt.[4] Neither parent

[4] This objection, which mother does not repeat here, was clearly unfounded. When mother testified at the contested hearing she admitted the text messages were

argued they were entitled to express findings with respect to each of the criteria set forth in section 361.3, subdivision (a), nor did they suggest that any one of those factors weighed in favor of maintaining J.C.'s placement with aunt. Indeed, once the juvenile court sustained allegations that aunt and mother conspired to use J.C. as a drug mule, there was no reasonable basis for contending that some countervailing factor under section 361.3, subdivision (a) would have authorized the court to continue J.C.'s placement with aunt. (Compare *H.G.*, *supra*, 146 Cal.App.4th at pp. 14-16.)

It would be unjust not to apply the forfeiture rule in this instance. Permitting parents to belatedly raise a claim regarding a matter that was all but conceded in the lower court would undermine the ultimate goal of our dependency law where "the well-being of the child and stability of placement is of paramount importance." (*Wilford J.*, *supra*, 131 Cal.App.4th at p. 754.)

B. Termination of Mother's Reunification Services

Mother contends the order terminating her reunification services must be reversed because (1) she was denied reasonable services; (2) the juvenile court based its ruling on a provision for bypassing services to a parent which does not apply to mother as a matter of law; and (3) she was deprived of her constitutional right to elicit testimony about the services provided to her.

1. The Reasonable Services Finding

Mother contends that the juvenile court erred by finding that the Agency provided her with reasonable reunification services. "We determine whether substantial evidence supports the trial court's finding, reviewing the evidence in a light most favorable to the prevailing party and indulging in all legitimate and reasonable inferences to uphold the court's ruling. [Citation.]" (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598 (*Katie V.*).)

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between her and aunt, but she claimed that the messages were more than a year old and had not been exchanged while she was in treatment at the Magnolia House.

"'[T]he focus of reunification services is to remedy those problems which led to the removal of the children.' [Citation.] A reunification plan must be tailored to the particular individual and family, addressing the unique facts of that family. [Citation.] A social services agency is required to make a good faith effort to address the parent's problems through services, to maintain reasonable contact with the parent during the course of the plan, and to make reasonable efforts to assist the parent in areas where compliance proves difficult. [Citation.] However, in most cases more services might have been provided and the services provided are often imperfect. [Citation.] 'The standard is not whether the services provided were the best that might be provided in an ideal world, but whether the services were reasonable under the circumstances.' [Citation.]" (*Katie V.*, *supra*, 130 Cal.App.4th at p. 599.)

Applying these principles, we affirm the finding that reasonable services were provided to mother. During the first six months after J.C. was removed from mother pursuant to the first section 387 petition, mother was provided with supervised visitation and assistance obtaining outpatient and inpatient drug treatment, which included a specific effort to secure treatment from Project Pride, a residential program that could address her mental health issues and problems with prescription medication. She was also offered transportation assistance and mother-child therapy through the SEED program. The social worker also reached out to the pastor at mother's church and provided her with a referral to individual counseling. At the six-month review hearing, mother did not dispute these services were reasonable and, in any event, the court's finding that reasonable services were provided is supported by substantial evidence.

Between the six and 12-month reviews, mother's services included regular in-person and telephone contact with the Agency social worker; monitoring of drug treatment services made available to her through Agency referrals; weekly supervised visits with J.C.; and transportation to and from services. The social worker also accompanied mother to a medication assessment conducted by a community mental health services organization, maintained contact with other service providers, and assisted mother in securing health care and other services through the SEED program.

After mother was discharged from Magnolia House, the Agency continued to provide her support and services despite her failure to commit to sobriety. With assistance from her family drug court service provider mother was conditionally admitted to another residential program at Friendship House, but she failed to provide requested documentation. She failed to attend a meeting with the Agency social worker and missed hearings at the family drug court which resulted in her being placed on inactive status. Although mother did not attempt to arrange ongoing visitation with J.C., arrangements were made for her so that the weekly visitation could continue.

This and other evidence summarized in our factual statement substantially establishes that mother received more than 12 months of reasonable reunification services after J.C. was removed from mother in November 2013. Without acknowledging this evidence, mother contends she was denied reasonable reunification services for two reasons.

First, mother contends that despite clear signs she had unaddressed mental health needs, the Agency failed to provide her with a referral for a psychological evaluation until the 12-month review hearing. The record citation mother provides does not support her factual claim. Furthermore, she overlooks an August 2013 report that was filed in anticipation of the first jurisdiction/disposition hearing in J.C.'s case which reflects that mother failed to follow through with individual therapy or a psychiatric referral.

Mother's second complaint is that the Agency failed to assist her in paying for additional drug treatment after she was terminated from Magnolia House. According to mother, when the social worker testified at the contested hearing she admitted that mother could have entered Friendship House, but the Agency withdrew her funding. Mother contends this alleged refusal to help pay for treatment demonstrates that the Agency failed to make reasonable efforts to assist her with the part of her case plan for which "compliance proved difficult." We disagree with mother's characterization of the social worker's testimony and with the conclusion she draws from it.

At the beginning of the February 5, 2015 session of the contested hearing, the court inquired whether mother was currently in treatment. The social worker advised the

court that mother had been conditionally accepted by Friendship House, but mother had failed to produce documentation required by that facility. Also, mother then failed to maintain contact with that program or with the family drug court, and also failed to attend drug court hearings which resulted in her being placed on inactive status. However, the day before the present hearing, the social worker assisted mother in submitting her documents to Friendship House and contacted the drug court to see if mother could re-enroll. The drug court counselor advised the social worker that mother could re-enroll if she continued to receive reunification services. If she was readmitted to the drug court program, mother would be provided with the funds to pay for Friendship House.

During the later part of the February 5 hearing, the social worker was sworn and testified about services provided to mother. The social worker reiterated the information provided to the court at the beginning of the hearing: she met with mother on the day before the hearing; mother produced the documentation that Friendship House previously requested; she helped mother contact both Friendship House and the counselor at the family drug court.

At the continued hearing on February 26, the social worker resumed her testimony. Under cross-examination by mother's counsel, the social worker testified that since the last hearing mother had been reinstated in family drug court, but funding for the bed at Friendship House was no longer available. Since the last court hearing, the Agency had identified one offer of funding for a transitional housing bed, but it turned out that mother did not qualify for that program. The social worker testified that she was not aware of any case in which the Agency itself paid for residential treatment and that the best funding source was family drug court. She had been in regular contact with the drug court recovery specialist, but a bed had not become available for mother since the February 5 hearing.

The information that the social worker provided (both informally and formally) in order to update the court about the Agency's ongoing effort to find residential treatment for mother after her termination from Magnolia House does not support mother's contention that the Agency was responsible for her lost opportunity to attend Friendship

House. Instead it supports the conclusion that mother has failed to avail herself of services that were provided to her. In any event, the Agency's inability to secure a fourth residential program for mother does not alter our conclusion that mother was afforded 12 months of reasonable reunification services.

2. The Finding under Section 361.5(b)(13)

Mother contends that the juvenile court erred by finding that she was not entitled to reunification services under section 361.5(b)(13). Subdivision (a) of section 361.5 provides that, unless an exception applies, "whenever a child is removed from a parent's or guardian's custody, the juvenile court shall order the social worker to provide child welfare services to the child and the child's mother and statutorily presumed father or guardians." The exception set forth in section 361.5(b)(13) provides that reunification services need not be provided to a parent when the court finds clear and convincing evidence that the parent "has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention . . . ."

The Agency concedes that this provision for by-passing services to a parent applies only to the disposition phase of a petition seeking to remove a child from "parent's or guardian's custody." (§ 361.5, subd. (a).) Here, however, the court invoked this exception during disposition of a section 387 petition to remove J.C. from a relative placement. Thus, the court erred by finding that section 361.5(b)(13) applied to mother. However, the juvenile court's finding under section 361.5(b)(13) was also cumulative in light of proper findings supported by the evidence which establish that (1) mother received 12 months of reasonable services and (2) there was no reasonable likelihood that J.C. could be returned to her parent within 18 months of removal.

"At the 12-month review hearing, a juvenile court may decline to order a 366.26 hearing and may continue the case for another 6 months 'only if it finds that there is a substantial probability that the minor will be returned to physical custody of his or her parent or guardian within six months or that reasonable services have not been provided

to the parent or parents.' (§ 366.21, subd. (g)(l).)" (*In re Ricky H*. (1992) 10 Cal.App.4th 552, 561-562.) We have already found that the juvenile court's reasonable services finding is supported by substantial evidence, and mother does not challenge the finding that J.C. could not be safely be returned home within 18 months of removal. Therefore, mother's services were properly terminated regardless of the court's erroneous reliance on section 361.5(b)(13).

3. Mother's Cross-Examination of the Agency Social Worker

Mother separately challenges the reasonable services finding on the ground that she was deprived of her constitutional right to cross-examine the Agency social worker about the type of services that were provided to her in this case. Specifically, mother contends that her trial counsel "repeatedly sought to re-call and cross-examine the social worker" regarding the Agency's failure to provide reasonable services, and the denial of those requests was constitutional error.

First, the record does not establish that the juvenile court denied repeated requests to cross-examine the Agency social worker. On the last day of the three-day contested hearing, mother's trial counsel did object to holding a combined evidentiary hearing for the section 387 petition and the 12-month review. However, the juvenile court overruled that objection because the matter had already been discussed during a chambers conference where everyone agreed that the parties were relying on the same evidence and making essentially the same arguments with respect to both matters.

Second, the record affirmatively shows that mother was afforded a meaningful opportunity to cross-examine the social worker about the services that were provided to her. The social worker testified at the February 5 and February 26 sessions of the contested hearing. Mother conducted her first cross-examination of this witness on February 26. Her counsel focused on two matters: the incident when aunt conspired to use J.C. to smuggle drugs to mother, and the drug treatment services that the Agency provided to mother. Regarding the second issue, the social worker confirmed that since the prior session of the hearing, mother was reinstated in the family drug court program. She also answered detailed questions about efforts the Agency made after that

reinstatement to find another residential program and provide funding so that mother could participate in additional drug treatment. Later in the hearing, after mother had completed her own testimony, the court granted mother's request to re-call the Agency social worker. At the conclusion of that second round of testimony, the court asked whether there were additional witnesses, and mother's counsel responded that she had no other witnesses to call. Thus, contrary to mother's position here, the record shows that mother was afforded the opportunity to cross-examine the Agency social worker about the services that were provided to her.

Finally, mother's authority is inapposite. She relies primarily on *In re James Q.* (2000) 81 Cal.App.4th 255, 267, which holds that "due process requires the juvenile court to permit a parent to avail himself or herself of the right, if he or she chooses, to a contested review hearing without conditioning that right on a demand for an offer of proof." No such condition was imposed here. To be sure, there was significant confusion regarding the interrelationship of the Agency's 12-month review recommendation to terminate mother's services and its section 387 petition recommendation to deny mother services pursuant to a provision which (as discussed above) was actually not applicable. Nevertheless, the hearing record supports a finding that mother had ample opportunity to contest all of the Agency recommendations and that her right to a contest was not conditioned on a demand for an offer of proof.

C. Denial of Services To Father

Father argues that the order setting a section 366.26 hearing must be reversed because he was not provided with reasonable reunification services tailored to his specific needs and designed to reunify his family.

"[W]hile the dependency scheme generally requires that parents be offered reunification services, the Legislature has limited those services to 'a maximum time period not to exceed 12 months, which under certain circumstances may be extended to 18 months. (§ 361.5, subd. (a).) This 18-month period is calculated from 'the date the child was originally taken from the physical custody of his or her parent. . . .' (§ 366.21, subd. (g)(1).) The reunification period may be as short as six months, and in some

dependency cases there may be no reunification period at all. [Citations.] The reunification period is expressly *not* tolled by the parents' physical custody of the child, or by the parents' absence or incarceration. (§ 361.5, subds. (a), (d), & (e)(1).)" (*In re Zacharia D.* (1993) 6 Cal.4th 435, 446, fn. omitted, original italics (*Zacharia D.*).)

In the present case, father concedes that he did not "present himself" to the court until very late in J.C.'s dependency case, and that he was not "raised to presumed status until after the 12 month mark." Nevertheless, he appears to contend that the juvenile court violated his fundamental right to parent his child by setting a section 366.26 hearing without first providing him with reasonable reunification services.

"[I]f a man fails to achieve presumed father status prior to the expiration of any reunification period in a dependency case, whether that period be 6, 12, or 18 months . . . , he is not entitled to such services under section 361.5." (*Zacharia D.*, *supra*, 6 Cal.4th at p. 453.) The only remedy available to a biological father who does not assert paternity until after the expiration of the reunification period is to file a petition to modify under section 388. (*Ibid.*; *In re Vincent M.* (2008) 161 Cal.App.4th 943, 955.) "While a biological father is not entitled to custody under section 361.2, or reunification services under section 361.5 if he does not attain presumed father status prior to the termination of any reunification period, he may move under section 388 for a hearing to reconsider the juvenile court's earlier rulings based on new evidence or changed circumstances." (*Zacharia D.*, *supra*, 6 Cal.4th at p. 454, fn. omitted.) "The section 388 petition will not be granted unless there are changed circumstances or new evidence demonstrating it is in the child's best interest to grant reunification services or custody. [Citations.]" (*Vincent M.*, *supra*, 161 Cal.App.4th at p. 955.)

Here, while father seeks review of the juvenile court's March 19, 2015 order, he does not articulate a specific objection to the denial of his section 388 request to change the prior court order denying him reunification services. In any event, that ruling is supported by substantial evidence. Father had notice and the opportunity to participate in this proceeding from the time this case was first filed in August 2013, but he elected not to assert his parental rights until after the statutory reunification period expired. Father

has failed to identify any changed circumstance or new evidence which demonstrates how or why granting him reunification services at this late stage in the proceeding would be in J.C.'s best interest.

IV.

DISPOSITION

The separate petitions for extraordinary relief filed by mother and father are denied on the merits. Our decision is final as to this court immediately. (Cal. Rules of Court, rule 8.490(b)(2)(A).)

_____
RUVOLO, P. J.

We concur:

_____
REARDON, J.

_____
STREETER, J.